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zamindari lands and in not extending it to the part of the village, which had formerly been muafi in its tenure. So here, we think the learned Judge of this Court was wrong in not extending to the owners of the resumed muafi the rights which were given to *malikan* generally in the wajib-ul-arz prepared after the resumption of the muafi land and the inclusion of this land in the mahal. We therefore allow the appeal. We set aside the decree of the learned Judge of this Court, and we restore the decree of the lower appellate Court with costs in all Courts.

Appeal decreed.

REVISIONAL CIVIL.

1908
April 11.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Karamat Husain.

JWALA (APPLICANT) *v.* GANGA PRASAD (OPPOSITE PARTY).*

Act No. I of 1877 *(Specific Relief Act), section* 9—*Criminal Procedure Code, section* 145—*Possessory suit*—*Effect of order of a Criminal Court*—*Revision.*

Held that the existence of an order passed under section 145 of the Code of Criminal Procedure is no bar to the institution of a suit under section 9 of the Specific Relief Act, 1877, for recovery of possession of the same land.

Held also that when a suit under section 9 of the Specific Relief Act is decreed the remedy of the defendant lies not in revision but in the institution of a suit for a declaration of the defendant's title and for possession. *Sheo Prasad Singh* v. *Kastura Kuar* (1) referred to.

THE plaintiff in this case sued under the provisions of section 9 of the Specific Relief Act, 1877, to recover possession of a house of which he alleged that he had been forcibly dispossessed by the defendant on the 10th of October 1905. The Court of first instance (Subordinate Judge of Cawnpore) found that the plaintiff was in possession of the house in question up to the 10th of October, 1905, and that upon that date forcible possession had been taken by the defendant, and accordingly gave the plaintiff a decree. It appeared, however, that a Criminal Court had, in proceedings taken under section 145 of the Code of Criminal Procedure, found that at the date of the institution of such

*Civil Revision No. 44 of 1907 from a decree of Girdhari Lal, Subordinate Judge of Cawnpore, dated the 28th of March 1907.

(1) (1887) I. L. R., 10 All., 119.

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proceedings, namely, on the 23rd of October 1905, the defendant was in possession of the house. Against the decree of the Subordinate Judge the defendant applied to the High Court in revision, contending (1) that the proceedings in the Criminal Court above referred to were a bar to a suit under section 9 of the Specific Relief Act, and (2) that after the Criminal Court's order the only remedy of the plaintiff was a Civil Court suit on title.

Mr. *R. K. Sorabji* and Babu *Parbati Charan Chatterji*, for the applicants.

Mr. *Muhammad Ishaq Khan*, for the opposite party.

STANLEY, C.J., and KARAMAT HUSAIN, J.—The suit out of which this application for revision has arisen was brought by the plaintiff under the provisions of section 9 of the Specific Relief Act for recovery of possession of a house, of which, he alleged, he had been forcibly dispossessed by the defendant on the 10th of October 1905. Section 9 of the Specific Relief Act, as amended by Act No. XII of 1891, provides that "if any person is dispossessed without his consent of immovable property, otherwise than in due course of law, he or any person claiming through him may by suit recover possession thereof, notwithstanding any other title that may be set up in such suit," and then follows the proviso that "nothing in this section shall bar any person from suing to establish his title to such property, and to recover possession thereof." The Limitation Act provides that such suit may be brought within six months from the date of the dispossession. It is found by the Court below that the plaintiff was in possession of the house in question up to the 10th of October 1905, and that upon that date forcible possession was taken by the defendant. It appears that proceedings were taken under section 145 of the Code of Criminal Procedure and an investigation was made by the Magistrate for the purpose of ascertaining which of the parties was in possession at the date of the institution of the proceedings, and it is found that at the date of the order of the Court, *viz.*, the 23rd of October, 1905, the defendant was in possession. The Magistrate's duty was confined to the ascertainment of the fact of possession at this time, and beyond this and passing an order declaring the person so

found to be in possession to be entitled to possession until evicted in due course of law, his duty ceased. The language of sub-section (4) of the section is that "the Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements . . . . and if possible decide whether any, and which, of the parties was, at the date of the order before mentioned in such possession of the said subject, etc." Now it is contended on behalf of the applicant that in view of the order of the Magistrate the plaintiff was debarred from taking advantage of the remedy provided by section 9 of the Specific Relief Act and that his only remedy was to institute a suit in the Civil Court to have his title declared and possession given to him. We are of opinion that the criminal proceedings in no way interfered with the right which the plaintiff had under the section of the Specific Relief Act to which we have referred so soon as his possession was interfered with by the defendant. As we have pointed out, forcible possession was taken from him on the 10th of October 1905. We therefore think that the Court below rightly considered the evidence, and having come to the conclusion that the plaintiff was in possession on the 10th of October 1905, and was forcibly ejected from such possession by the defendant, was justified in giving possession to the plaintiff. We should point out that the application in revision was not a proper remedy for the defendant under the circumstances. It has been laid down over and over again that the Court will not interfere in revision where other remedies are open to a party. It was open to the defendant to institute a suit for declaration of his title and for possession, and he is not debarred from doing so by the decree passed under section 9 of the Specific Relief Act. See *Sheo Prasad Singh* v. *Kastura Kuar* (1).

We dismiss the application with costs.

Application dismissed.

(1) (1887) I. L. R., 10 All., 119.